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DEPARTMENT OF JUSTICE

CPCLO Order No. 003-2015

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of a new system of records and removal of one system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A-130, notice is hereby given that the Department of Justice (Department or DOJ) proposes to establish a new Department-wide system of records entitled, "Department of Justice, Giglio Information Files," JUSTICE/DOJ-017. This system has been established to enable DOJ investigative agencies to collect and maintain records of potential impeachment information and to disclose such information to DOJ prosecuting offices in order to ensure that prosecutors receive sufficient information to meet their obligations under Giglio v. United States, 405 U.S. 150 (1972). The system has also been established to enable DOJ prosecuting offices to maintain records of potential impeachment information obtained from DOJ investigative agencies, other federal agencies, and state and local agencies and to disclose such information in accordance with the Giglio decision. The purpose of publishing this

Department-wide notice is to provide a comprehensive notice to cover all Department Giglio records, thereby increasing administrative efficiency and promoting consistent maintenance of Department Giglio records in accordance with the Attorney General's Giglio Policy (found in Section 9-5.100 of the United States Attorneys' Manual) as updated in 2014. Accordingly, this Department-wide system notice replaces, and the Department hereby removes, the notice for the system entitled, "United States Attorney's Office, Giglio Information Files," JUSTICE/USA-018, 65 FR 75308 (Dec. 1, 2000).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESS: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, U.S. Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile at (202) 307-0693. To ensure proper handling, please reference the CPCLO Order Number indicated above on your correspondence.

FOR FURTHER INFORMATION CONTACT: Tricia Francis, Executive Office for United States Attorneys, FOIA/Privacy Act Staff, 600 E Street NW., Suite 7300, Washington, DC 20530, or by facsimile at (202) 252-6047.

SUPPLEMENTARY INFORMATION: This Department-wide system notice replaces the notice for the system entitled, "United States Attorney's Office, Giglio Information Files," JUSTICE/USA-018, 65 FR 75308 (Dec. 1, 2000). That system of records was exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k).

Those exemptions are codified in the Code of Federal Regulations (CFR) section for Exemption of United States Attorneys Systems (28 CFR 16.81(g) and (h)). The Department is establishing a new CFR section for exemptions of the JUSTICE/DOJ-017 system (28 CFR 16.135) and amending 28 CFR 16.81 by removing paragraphs (g) and (h). In the meantime, the Department intends that the exemptions established in 28 CFR 16.81(g) and (h) will continue to apply to the JUSTICE/USA-018 system and all its records until 28 CFR 16.135 is effective.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

March 4, 2015.
Date

Erika Brown Lee
Chief Privacy and Civil Liberties Officer
United States Department of Justice

JUSTICE/DOJ-017**SYSTEM NAME:**

Department of Justice, Giglio Information Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at United States Attorneys' Offices and Department of Justice litigating sections with authority to prosecute criminal cases ("DOJ prosecuting offices") as well as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Marshals Service, the Office of the Inspector General, and the Office of Professional Responsibility ("DOJ investigative agencies"). For office locations, see <http://www.justice.gov> and the websites for DOJ prosecuting offices and investigative agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may serve as affiants or testify as witnesses in criminal proceedings brought by the United States Attorneys' Offices and Department of Justice litigating sections with authority to prosecute criminal cases, including the Criminal Division, National Security Division, Civil Rights Division, Antitrust Division, Environment and Natural Resources Division, Tax Division, and Civil Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains potential witness impeachment information, including records of disciplinary actions. Potential impeachment information has been generally

defined as impeaching information which is material to the defense of a federal criminal prosecution. It also includes information that either casts a substantial doubt upon the accuracy of any evidence, including witness testimony, the prosecutor intends to rely on to prove an element of any crime charged or might have a significant bearing on the admissibility of prosecution evidence. Records include, but are not limited to: (a) specific instances of witness conduct that may be used for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion as to a witness' character or reputation for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased. Impeachment files may include internal investigation reports, violations of agency rules and regulations, and other negative credibility findings based on the witness' or affiant's prior statements made under oath. Giglio systems may also include records that track requests and responses for record-keeping purposes. Other categories of records include written statements, human resources records, complaints from the public, police reports, and/or other disciplinary records. The system may also contain any related judicial rulings, pleadings, correspondence, or memoranda pertaining to the relevant criminal case. Records also include identifying information concerning covered individuals such as name, employing agency, job title, and business contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 28 U.S.C. 516 and 547.

PURPOSE OF THE SYSTEM:

The purpose of this system is to ensure that the Department's prosecutors and investigative agencies receive sufficient information to meet their obligations under Giglio v. United States, 405 U.S. 150 (1972). This system enables the Department's prosecuting offices and investigative agencies to collect, maintain, and disclose records of potential impeachment information that is material to the defense of federal criminal prosecutions.

Primary users of this system will be Agency Officials, who are senior officials serving as the points of contact concerning potential impeachment information within each of the Department's investigative agencies; Requesting Officials, who are senior officials serving as the points of contact concerning potential impeachment information within each of the Department's prosecuting offices; and Assistant United States Attorneys and other Department attorneys who are prosecuting cases and have an obligation to disclose impeachment material under the Giglio decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in the system of records may be disseminated as a routine use of such record as follows:

(a) A record will be provided to a court and/or defense attorney in satisfaction of the Department's obligations under the Giglio decision.

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an

administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(c) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law – criminal, civil, or regulatory in nature – the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(d) To any person or entity that the Department has reason to believe possesses information regarding a matter within the jurisdiction of the Department, to the extent deemed to be necessary by the Department in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(e) A record relating to a case or matter may be disseminated in connection with a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing.

(f) A record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice.

(g) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to

make such other inquiries and reports as are necessary during the processing of the case or matter.

(h) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(i) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(j) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(k) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity)

that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(m) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and/or electronic format. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Paper records may be stored in individual file folders and file cabinets with controlled access, and/or other appropriate GSA-approved security containers.

RETRIEVABILITY:

Individual records are accessed by use of data-retrieval capabilities of computers. Hard-copy formats are accessed via manual retrieval. Data will be retrieved through a number of criteria, including witness or affiant name, case name, or other personal identifier.

SAFEGUARDS:

Records are safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies and the

Attorney General's Giglio Policy, as set forth in Section 9-5.100 of the United States Attorneys' Manual. Records maintained by DOJ prosecuting offices are securely maintained and are accessible only upon a request to a Giglio Requesting Official or other senior management entrusted with this responsibility. Records are only disclosed to requesting prosecutors within the prosecuting office on a case-related, need-to-know basis. In general, records and technical equipment are maintained in facilities with restricted access. For electronic records, the required use of password protection identification and other logical safeguards also restrict access.

RETENTION AND DISPOSAL:

Records are retained and destroyed in accordance with applicable schedules and procedures issued or approved by the National Archives and Records Administration (NARA). Retention periods vary depending on the type of the record. The General Records Schedule (GRS) for *Giglio* files is GRS 20. All records will also be maintained in accordance with the Attorney General's Giglio Policy, found in Section 9-5.100 of the United States Attorneys' Manual. Accordingly, whenever potential impeachment information has been disclosed to the court or defense, or when a decision has been made that an agency employee should not testify or serve as an affiant because of potential impeachment information, the potential impeachment information, together with any related judicial rulings, pleadings, correspondence, or memoranda, will be retained in the prosecuting office's Giglio information file; copies will be provided to the agency official that provided the information and to the employing agency official for retention. In other circumstances, prosecuting offices may keep any written legal analysis and substantive communications integral to the analysis, including legal advice relating to the decision,

and a summary of the potential impeachment information in the Giglio system of records, but the complete description of the potential impeachment information received from the Agency Official will not be maintained in this system of records. When an employee has retired, has been transferred to an office in another judicial district, or has been reassigned to a position in which the employee will neither be an affiant nor witness, and any litigation pending in the prosecuting office in which the employee could be an affiant or witness is resolved, the Requesting Official shall remove any record that can be accessed by the identity of the employee. More specifically, the records must be removed at the conclusion of the direct and collateral appeals, if any, or within one year of the agency employee's retirement, transfer, or reassignment, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system are the Giglio Requesting Official within each DOJ prosecuting office and the Agency Official within each DOJ investigative agency, as those officials are defined in Section 9-5.100 of the United States Attorneys' Manual. For office locations, see www.justice.gov and the websites for DOJ prosecuting offices and investigative agencies.

NOTIFICATION PROCEDURES:

Address inquiries to the System Managers listed above.

RECORD ACCESS PROCEDURES:

Giglio information is maintained at DOJ prosecuting offices and DOJ investigative agencies. The system managers for specific DOJ component information are as follows:

For Antitrust Division information contact: FOIA/PA Unit, DOJ/Antitrust Division, 450 Fifth Street NW., Suite 1000, Washington, DC 20530-0001.

For the Bureau of Alcohol, Tobacco, Firearms and Explosives information contact: Disclosure Division, DOJ/Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue NE., Room 1E 400, Washington, DC 20226.

For Civil Division information contact: FOIA/PA Office, DOJ/Civil Division, Room 7304, 20 Massachusetts Avenue NW., Washington, DC 20530.

For Civil Rights Division information contact: FOIA/PA Branch, DOJ/Civil Rights Division, 950 Pennsylvania Avenue NW., Room 3234, Washington, DC 20530-0001.

For Criminal Division information contact: FOIA/PA Unit, DOJ/Criminal Division, Keeney Building, Suite 1127, Washington, DC 20530-0001.

For Drug Enforcement Administration information contact: FOIA/PA Unit (SARF), DOJ/Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152.

For Environment and Natural Resources Division information contact: FOIA/PA Office, Law and Policy Section, DOJ/Environment and Natural Resources Division, P.O. Box 4390, Ben Franklin Station, Washington, DC 20044-4390.

For Executive Office for United States Attorneys information contact: FOIA/PA Staff, DOJ/EOUSA, 600 E Street NW., Room 7300, Washington, DC 20530-0001. Contact information for individual United States Attorneys' Offices in the 94 Federal judicial districts nationwide can be located at www.usdoj.gov/usao.

For Federal Bureau of Investigation information contact: Federal Bureau of Investigation, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602-4483.

For National Security Division information contact: FOIA Public Liaison, DOJ/National Security Division, 950 Pennsylvania Avenue NW., Room 6150, Washington, DC 20530-0001.

For Office of the Inspector General information contact: FOIA Contact, DOJ/Office of the Inspector General, Office of General Counsel, 950 Pennsylvania Avenue NW., Room 4726, Washington, DC 20530.

For Office of Professional Responsibility information contact: Special Counsel for FOIA/PA, DOJ/Office of Professional Responsibility, 950 Pennsylvania Avenue NW., Suite 3266, Washington, DC 20530.

For Tax Division information contact: Assistant Attorney General, Tax Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530.

For United States Marshals Service information contact: FOIA/PA Officer, Office of General Counsel, DOJ/U.S. Marshals Service, CS4, 10th Floor, 2604 Jefferson Davis Highway, Alexandria, VA 22301.

A request for access to a record in this system must be submitted in writing and comply with 28 CFR part 16. The envelope and the letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted

under the penalty of perjury. Although no specific form is required, requesters may obtain a form (Form DOJ-361) for use in certification of identity from the FOIA/Privacy Act Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530-0001, or from the Department's Web site at http://www.justice.gov/oip/forms/cert_ind.pdf. As described below in the section entitled "Exemptions Claimed for the System," the Attorney General has exempted this system of records from the notification, access, and amendment provisions of the Privacy Act. These exemptions apply only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). An individual who is the subject of a record in this system may seek access to those records that are not exempt from the access provisions. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORDS PROCEDURE:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the address indicated in the "Record Access Procedures" section, above. The request must comply with 28 CFR 16.46 and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the record(s). Some information may be exempt from the amendment provisions, as described in the section entitled "Exemptions Claimed for the System." An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Sources of records contained in this system include, but are not limited to, individuals covered by the system; reports of federal, state, and local law enforcement agencies; client agencies of the Department; other non-Department of Justice investigative agencies; other federal, state, and local law enforcement information; data, memoranda, and reports from the Court and agencies thereof; disciplinary records; publicly available information, including electronic court records; and the work product of Assistant United States Attorneys and other DOJ attorneys, staff, and legal assistants working on particular cases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). The exemptions will be applied only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register as of this date.

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